

MAY 23 1987

No. 86-1686

JOSEPH F. SPANIOL, JR.
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IN THE
Supreme Court of the United States

October Term, 1986

Ford Motor Company,*Petitioner,*

v.

Kathy Andersen, et al.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondents strongly disagree with Petitioner's formulation of the question presented by this case. They believe the question presented is:

Whether Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a), preempts otherwise valid state law contract, quasi-contract and fraud claims brought by persons to whom an employer made fraudulent representations at a time when they were not employees and were not covered by a collective bargaining agreement in order to induce them to accept employment.



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ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

The Respondents respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the Eighth Circuit's opinion in this case. That opinion is reported at 803 F.2d 953. The Eighth Circuit denied Petitioner's Petition for a Rehearing, which order is unreported (App. C, 18a-19a).

STATUTORY PROVISION INVOLVED

Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a), provides in pertinent part:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce * * * may be brought in any district court of the United States having jurisdiction of the parties * * *.

STATEMENT OF THE CASE

The Petitioner has significantly twisted the nature of Respondents' claims by omitting the primary facts from its statement of the case. It does so in order to support its view of the question presented and to leave this Court with the incorrect impression that this case is a simple wrongful discharge claim in which Respondents challenged the employers right to discharge them from employment. In fact, Respondents' claims do not challenge their termination. Instead, their lawsuit is based upon certain misrepresentations and offers that Ford made to them before they were employees and before they became covered by the Collective Bargaining Agreement between Respondents and the United Auto Workers, International Union (hereinafter, "the Union").

The Respondents' lawsuit arises from events that occurred in the fall of 1983, when Ford's representatives contacted them for the purpose of offering them employment at Ford's Twin Cities assembly plant. During the course of their conversations with Respondents, Ford's representatives made fraudulent misrepresentations concerning the status of a preferential hiring agreement between Ford and the Union and also misrepresented the nature of the positions Ford was offering them. Respondents allege Ford told them the preferential hiring list was exhausted and that they would not be displaced in the future from the positions they were being offered because there were no persons left on the preferential hiring list to displace them. They also allege that Ford offered them positions as permanent status em-

ployees, as distinguished from positions as temporary workers. At the time these misrepresentations and offers were made, Respondents allege that Ford knew them to be false. Respondents' lawsuit is based upon these misrepresentations.

The facts surrounding Ford's misrepresentations are as follows:

Ford contacted Respondents because it was having difficulty filling positions at the plant from the preferential hiring list in time for a scheduled production increase. Ford's management had scheduled a line speed-up for the Twin Cities assembly plant, which was to begin on December 5, 1985, to increase the number of trucks the plant was producing. In order to put this line speed increase into effect, it was necessary to hire approximately 250 additional workers for the Twin Cities assembly plant. Ford began to obtain these additional workers by using the preferential hiring program which had been negotiated between Ford and the Union. (App. 3a.)

The procedure for identifying and contacting preferential placement applicants proved to take much longer than Ford anticipated. In addition, Ford failed to take into account the number of people who would decide not to stay in the Twin Cities once they had reported to work and the number of preferential employees who would either not show up at the plant when scheduled to do so, or would be disqualified by Twin Cities plant management. By mid-November, Ford's manpower projections for the Twin Cities plant showed that it would be approximately 50 employees short of the number of new workers it would need by the date the line speed increase was to begin. (C.A. App. 132.)

In order to make up this shortfall and meet the December production schedule, Ford contacted the Respondents and offered them jobs at the Twin Cities plant. The Respondents (with one exception) were all people who had previously worked at the Twin Cities assembly plant but had been laid off in 1980 as a result of the recession in the auto industry. None of the Respondents were covered by the Collective Bargaining Agreement. They had no rights to be recalled to work at the Twin Cities plant, since their seniority rights had expired and they were not eligible for the preferential hiring list. (C.A. App. 133.)

Because Respondents were former employees who had some familiarity with the Collective Bargaining Agreement, they were aware of the preferential hiring list and the process of acquiring seniority. As a result, many of them asked whether the preferential hiring list was exhausted and what their status as employees would be if they came to work at the plant. They wanted to know whether they would be permanent or temporary employees. Ford told them that they were being offered employment as permanent status employees and were not being offered temporary positions. Ford also told them that the preferential hiring program had been completed and that they would not be replaced in the future by preferential placement applicants as there were none left on the list to replace them. (C.A. App. 92-94, 96.)

Prior to accepting Ford's offer, the Respondents also attended group orientation sessions at the Twin Cities assembly plant. They asked the same questions at these sessions and they were again told the same thing: The jobs they were being offered were permanent jobs. The preferential hiring list had been exhausted, so they would not be replaced by preferential placement applicants. The only

possibility of being laid off in the future was if a major downturn in the economy occurred. Based on these answers to their questions, the Respondents accepted Ford's offer for employment as permanent employees and started working at the Twin Cities assembly plant. (C.A. App. 92-94.)

All of the statements which Ford's representatives made concerning the preferential hiring list and the permanent nature of their employment status were in fact misrepresentations. The reality was that the Respondents were only temporary employees, hired by Ford to meet its production schedule at the Twin Cities assembly plant and to fill in until it could process enough preferential placement applicants to replace them. The preferential hiring list had not been exhausted. Several thousand preferential placement applicants remained on this list and were eligible for employment at the Twin Cities assembly plant. (C.A. App. 94.) Ford had simply underestimated how long it would take to get enough of them to the Twin Cities. ¹

Shortly after Respondents began working for Ford, the Union learned that Ford had circumvented the preferential placement agreement by hiring people to work at the Twin Cities assembly plant who were not on the preferential hiring list. It immediately demanded that the Respondents be replaced by preferential placement applicants as required by the agreement. In February 1984, less than 90 days

¹Ford states in its Petition that the Respondents could have been replaced under the terms of the Collective Bargaining Agreement after they were hired if new names were added to the preferential list during Respondents' probationary periods. (Petition, p. 18 at fn. 7) Respondents do not dispute this contention. However, it is irrelevant to their claims. Their claims grow out of the false representations Ford made to Respondents. Respondents allege that, at the time Ford told them the preferential list was exhausted and that no preferential employees remained on the list to bump them, there were actually several thousand preferentials on the list. Whether or not this allegation is true is the key factual determination presented by Respondents' case.